

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CASCADE MANUFACTURING SALES,
INC., a Washington corporation,

Plaintiff,

v.

PROVIDNET CO TRUST, a Washington
trust dba WORMWRANGLER.COM;
BARRY RUSSELL, an individual,

Defendant.

Case No. C08-5433RBL

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

This matter is before the court on the Plaintiff's Motion for Summary Judgment. [Dkt. #70] The Court has reviewed the materials submitted for and against the Motion. Oral argument is not necessary for the Court to resolve the issue raised in the Motion. For the Following reasons, the Motion is DENIED.

Plaintiff seeks an Order finding that the Defendants have infringed on Plaintiff's trademark and that the sole issue remaining for trial is the amount of damages caused by the infringement. This Court previously granted a preliminary injunction enjoining Defendant from using the term "Gusanito Worm Factory" (and similar names) in competing with the Plaintiff's registered mark, "Worm Factory," in the marketing of composting bins. [Dkt. #33]. The Court subsequently clarified that all iterations of that phrase were enjoined, including "factory of worms," but not including other names used by the defendant, including "Gusanito" standing alone, and "Worm Wrangler." [Dkt. #42].

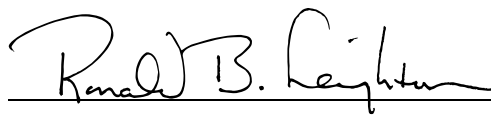
Further action of the Court resulted in a finding of contempt by Defendants in continuing to use the words "worm" and "factory" in marketing their product. Dkt. #65]. The Defendants were given a deadline

1 for informing the court of their efforts to cease and desist further trademark infringement. Defendant filed a
2 lengthy response within that deadline. The Plaintiff's response to that submittal was this pending Motion for
3 Summary Judgment.

4 After reviewing the materials filed by both parties in the tortured history of this case, the Court is
5 convinced that there are material issues of fact related to the fact and extent of "confusion" between the
6 various product names used by the parties. This is true even though the Court remains convinced that the
7 preliminary injunction was properly granted. Moreover, legitimate issues regarding the Defendants' efforts
8 to avoid infringement suggest to the court that the relief sought by the Plaintiff in the current Motion would
9 do little to narrow the issues remaining for trial. The Court also wants to point out that the Defendants are
10 not represented by counsel, and have not been able to provide the Court with adequate references to the law.
11 The material submitted has instead consisted of a "document dump" unaccompanied by an explanation of
12 what the documents mean in the context of the larger dispute. Defendants are strongly encouraged to retain
13 counsel, and if they are not able to do so, to prepare to provide the Court legal argument and authority.

14 Plaintiff's Motion for Partial Summary Judgment [Dkt. #70] is DENIED.

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16 IT IS SO ORDERED this 29th day of September, 2009.

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19 RONALD B. LEIGHTON
20 UNITED STATES DISTRICT JUDGE
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